

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**KYLE DENNY and
COURTNEY DENNY**

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:19cv629-TBM-RPM

**OCEAN MARINE GROUP, INC.,
MICHAEL KEITH KING,
DON WESTON, and
KEVIN MCLAUGHLIN**

DEFENDANTS

**MOTION FOR LEAVE TO AMEND COMPLAINT TO
ADDRESS NEWLY DISCOVERED INFORMATION AND EVIDENCE
AND FOR LEAVE TO JOIN A NEWLY DISCLOSED, POTENTIAL
DEFENDANT**

COME NOW the Plaintiffs, Kyle and Courtney Denny, by and through undersigned counsel, and file this, their *Motion for Leave to Amend Complaint to Address Newly Discovered Information and for Leave to Join a Newly Disclosed, Potential Party Defendant*, and in support thereof would show unto this Honorable Court as follows, to-wit:

1. Plaintiffs file the instant motion out of abundance of caution, seeking to amend their Complaint to address information learned during the deposition of Michael Keith King, on December 21, 2020. Further, Plaintiffs seek to join a newly discovered interested party/Defendant, despite Defendant Ocean Marine Group, Inc.'s failure to disclose the existence of such party until the filing of dispositive motions on February 1, 2021.

2. Plaintiffs filed the instant Complaint on September 19, 2019, seeking to recover damages from all named Defendants under theories of fraud, general negligence, and punitive damages.

3. The cause arises from Plaintiffs purchase of a “new” boat from Ocean Marine Group, Inc., on April 21, 2018.

4. As averred in the Complaint, Plaintiffs met with each of the named Defendants prior to purchasing a “new” 2017 Sportsman 247 Masters from Ocean Marine Group, Inc., from said Defendant’s Ocean Springs, Mississippi dealership. At all times relevant hereto, each of the named Defendants assured Plaintiffs that the boat was “new.” However, after purchasing the boat, Plaintiffs learned that the boat had been loaned to a charter fishing operation for several months and used extensively.

5. During the deposition of Michael Keith King, taken on December 21, 2020, Plaintiffs and their undersigned counsel learned that King and Ocean Marine Group, Inc. had, in fact, loaned the subject boat to charter captain Ronnie Daniels while his Sportsman 247 was undergoing warranty repairs with Sportsman. When Daniels returned the subject boat, King noted manufacturer defects with the subject boat and sent it back to Sportsman for warranty repairs. At all times relevant, Keith King fraudulently concealed all information relative to manufacturer defects, warranty claims, etc. *See* Exhibit “A” – Deposition Testimony Excerpts – Keith King.

6. At this time, Plaintiffs seek leave to amend the Complaint to address Defendants’, King and Ocean Marine Group, Inc., fraudulent concealment of manufacturer defects and warranty claims made on the boat that Ocean Marine sold to Plaintiffs as “new.” Plaintiffs wish to add a claim for fraud by omission or, in the alternative, fraudulent concealment. Plaintiffs also wish to add a vicarious liability claim.

7. Further, out of abundance of caution, Plaintiffs seek leave to join MJM-OMG, LLC d/b/a Ocean Marine Group as a party Defendant. Plaintiffs would

respectfully show that all named Defendants herein are properly before this Honorable Court; that this Court has personal and subject matter jurisdiction over all Defendants and all choses of action alleged; and that said Defendants have all consented to this Court's jurisdiction by actively participating in this litigation since November 2019. Nevertheless, despite having never disclosed that any other party might be liable to Plaintiffs; despite having never disclosed the existence of any other necessary parties or parties Defendant; despite having never filed any motions to dismiss Ocean Marine Group, Inc. as party Defendant, and despite having never filed any third party claims to join other potential Defendants, Ocean Marine Group, Inc. now takes the position that MJM-OMG, LLC d/b/a Ocean Marine Group is the proper Defendant, having purchased all of Ocean Marine Group's assets sometime in 2017.

8. Plaintiffs would respectfully show that the "Buyers Order" prepared in connection with their purchase of the subject boat reflects that the seller is Ocean Marine Group. Nowhere does the "Buyers Order" reflect the existence of MJM-OMG, LLC d/b/a Ocean Marine Group. *See* Exhibit "B" – Buyers Order.

9. Moreover, it is noteworthy that Ocean Marine Group, Inc., as named in the original Complaint, is still a going concern, in good standing with the Mississippi Secretary of State. The filings with the Secretary of State reflect that Ocean Marine Group, Inc. is a Mississippi profit corporation, in good standing, with a principal office address at 806 Canebrake Drive, Ocean Spring, Mississippi. Michael Keith King is listed as the incorporator, director, and president of Ocean Marine Group, Inc. *See* Exhibit "C" – Secretary of State Info for Ocean Marine Group, Inc.

10. Further, it is noteworthy that neither Michael Keith King nor Ocean Marine Group, Inc. disclosed the existence or identity of MGM-OMG, LLC prior to their February 1, 2021 motion for summary judgment, filed more than a year after the commencement of these proceedings. Defendants never disclosed the existence or identity of said entity in initial disclosures. Defendants never filed a motion to dismiss as to Ocean Marine Group, Inc. Defendants never filed a third party claim against MMG-OMG, LLC. Defendants never sought to join MMG-OMG, LLC as a party. Rather, Defendants actively participated in this litigation for more than one (1) year before even acknowledging the existence of MMG-OMG, LLC. *See* Exhibit “D” – Initial Disclosures of Michael Keith King and Ocean Marine Group, Inc.

11. Moreover, it is noteworthy that MJM-OMG, LLC d/b/a Ocean Marine Group does not share any office addresses, incorporators, members, or officers with Ocean Marine Group, Inc. *See* Exhibit “E” – Application to Register Foreign LLC. Furthermore, as of the date the Complaint was filed in this cause, MJM-OMG, LLC was administratively dissolved, and thus was not a going concern. In fact, said administrative dissolution began on December 10, 2018, and was not resolved until November 13, 2019, which is very conveniently the day that Ocean Marine Group, Inc. and Michael Keith King filed Answers to the Complaint in this cause. *See* Exhibit “F” – Application for Reinstatement Following Administrative Dissolution. Furthermore, MJM-OMG, LLC did not even apply for the fictitious business name registration as “Ocean Marine Group” until November 10, 2020, more than one (1) year after the commencement of these proceedings and less than ninety (90) days ago. *See* Exhibit “G” – Fictitious Business Name Registration. As such, there is absolutely no way Plaintiffs would have learned of

the existence or involvement of said entity without information from Ocean Marine Group, Inc. and/or Michael Keith King.

12. Finally, Plaintiffs would respectfully show that, on December 21, 2020, during his deposition, Michael Keith King deposed and stated that he was the sole proprietor of Ocean Marine Group, Inc., and that he still owns the Ocean Springs location where Plaintiffs purchased their boat. *See* Exhibit “H” – Deposition Testimony Excerpts of Michael Keith King.

13. Based on the above and foregoing, Plaintiffs would respectfully request leave to amend their complaint to add claims against Ocean Marine Group, Inc. and Michael Keith King for fraudulent concealment or, in the alternative, fraud by omission. Further, out of abundance of caution, Plaintiffs respectfully request leave to join MMG-OLC, LLC as Defendant. Plaintiffs undersigned counsel certainly believes that Ocean Marine Group, Inc. has waived any defense that they are not a proper party Defendant by wholly failing to take any action to alert Plaintiffs or this Honorable Court of the “proper” party Defendant named on February 1, 2021, nearly eighteen (18) months after the commencement of this action. Nonetheless, Plaintiffs move to join MMG-OLC, LLC out of abundance of caution. Plaintiffs attach their proposed Amended Complaint hereto as Exhibit “I.”

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that this their *Motion for Leave to Amend Complaint to Address Newly Discovered Information and for Leave to Join and/or Substitute a Newly Disclosed, Potential Party Defendant* be received and filed, and after a fully hearing hereon, that this Honorable Court enter Order granting the relief requested therein.

Respectfully submitted, this 9th day of February, 2021.

BY: KYLE DENNY and
COURTNEY DENNY

BY: /s/ Reed S. Bennett
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CERTIFICATE OF SERVICE

I hereby certify that I have this date filed a true and correct copy of the above and foregoing pleading with the Clerk of Court using the CM/ECF electronic case filing system, which sent electronic notice of such filing to counsel for Defendants.

SO CERTIFIED this the 9th day of February, 2021.

By: /s/ Reed S. Bennett
Reed S. Bennett